

Standard USHC-2: The student will demonstrate an understanding of the establishment of the United States as a new nation.

USHC-2.7 Summarize the origins and the evolution of the United States Supreme Court and the power it has today, including John Marshall's precedent-setting decisions such as that in *Marbury v. Madison*. (H, P)

Taxonomy Level: 2B Understand/ Conceptual Knowledge

Previous/future knowledge:

In 12th grade American Government, students will contrast the distribution of powers and responsibilities within the federal system, including the purpose, organization, and enumerated powers of the three branches; the workings of the Supreme Court; and the operation of the law-making process (USG -3.1).

It is essential for the students to know:

The principals and ideas of the Constitution were strengthened by the decisions of the **Marshall Court** which established a strong federal government that was supreme over the states. The Constitution does not go into detail about how the court system should be set up so the First Congress established the court system.[Judiciary Act of 1789]. The first chief justices presided over a very weak court. The Marshall Court is an example that presidential power is felt long after the administration is over through presidential appointment of justices who hold political ideas similar to the president's own. This has been true throughout American history and continues to be true today. The ruling of the Marshall Court in *Marbury v. Madison* (1803) began the enduring precedent of judicial review as a vital part of the checks and balances system.

Federalist William Marbury was appointed and confirmed as one of the 'midnight' judges. However his commission to a lower court had not been delivered before the Democratic Republicans took office and Secretary of State Madison subsequently refused to deliver it. Marbury appealed to the Supreme Court for a court order [writ of mandamus] that would require Madison to deliver the commission. The court was authorized to issue such a writ by Congress. Marshall knew that if the court ordered the commission to be delivered to Marbury that the order would be ignored by the Secretary of State and the judicial branch would continue to be seen as powerless. Reading the Constitution closely, Marshall realized that the document does not give the power to issue such a writ to the Supreme Court under its original jurisdiction. The court could only hear such a case on appeal. The Marshall court ruled that, although Marbury deserved his commission, the court could not order that it be delivered because Congress could not give a power to the Supreme Court which the Constitution did not grant. This was a landmark decision because it was the first time that the court claimed for itself the right of judicial review, the right to determine the constitutionality of an act of Congress. Since the decision did not have to be enforced by the executive branch, the court could not be undermined by its political rivals who now controlled the executive branch. By denying itself the right to issue the writ, the Marshall Court claimed for itself a far greater role- to determine what is constitutional and what is not. The Court under John Marshall asserted its role as a vital third branch of government.

The Marshall Court continued to strengthen the role of the federal government in other cases.

It is not essential for the students to know:

Students do not need to understand anything about the early court of John Jay. Students do not need to know that John Marshall was named Chief Justice of the Supreme Court in 1800 as one of the 'midnight' judges appointed by John Adams and confirmed by the Federalist Congress before the Democratic Republican administration of Thomas Jefferson took over the presidency and the Congress. It is not

necessary for students to remember all of the details of the *Marbury* case. However they should hear them in order to understand the political circumstances and importance of the ruling. They do not need to know the names or details of other Marshall cases, however exposure to them will help students to understand the important role of the Marshall Court in strengthening the federal government over the state governments. For instance, *Dartmouth vs. Woodward* upheld the sanctity of contracts and denied the state of New Hampshire the right to take over Dartmouth College; *McCulloch v. Maryland* upheld the constitutionality of the national bank and denied the state of Maryland the right to tax the national bank; *Gibbons v. Ogden* claimed control of interstate trade for the national government over the claims of both New York and New Jersey; *Worcester v. Georgia* denied the right of the state of Georgia to limit the rights of the individual. Students also do not need to know that the court did not claim the right of judicial review again until the *Dred Scott* case of the 1850s. It is also not necessary for students to know that Jefferson and Madison had claimed the right to decide constitutionality of federal laws for the states in the *Virginia and Kentucky Resolutions* or that John C. Calhoun claimed the right of nullification for the states in his *South Carolina Exposition and Protest*.

Assessment guidelines:

Appropriate assessments would require students be able to **explain** the ruling in *Marbury v. Madison* and the importance of judicial review. Students should also be able to **summarize** the role of the Marshall Court in supporting a strong national government and in continuing this Federalist tradition even after the party had lost control of Congress and the presidency. .